IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

CRL.A.No. 81 of 2006(C)

AGAINST THE JUDGEMENT IN CRLP.13/2006 Dated 06/01/2006
CC.330/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA

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APPELLANT: COMPLAINANT

U.NANU,
S/O.CHATHU,
THYVALAPPIL HOUSE,
P.O.THOLAMBRA, KANNUR.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: ACCUSED

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1. SUMITH.K.P,
PROPRIETOR, NEW STONE,
BED AND MAT MERCHANT,
AMRITHA COMPLEX, P.O.KUTHUPARAMBA,
KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 81 of 2006

Dated this the 12th March, 2007.

J U D G M E N T

The complainant in C.C.No.330/2003, on the file of the Judicial First Class Magistrate Court, Kuthuparamba, is the appellant. The complaint preferred by him under Section 138 of the Negotiable Instruments Act, against the first respondent, accused, was dismissed on the ground that the appellant did not take any steps, by way of producing the stamped cover for causing the production of ledger extract of the Bank, through which the transaction of the cheque took place, after his examination as PW.1, and marking five documents. The complainant was also absent. There was no representation from the concerned counsel, but another counsel made representation, and he was unaware of the further evidence to be adduced before him. In such circumstances, the learned Magistrate dismissed the complaint, and acquitted the accused. Hence, this appeal on obtaining leave of this Court.

2. Counsel for the appellant submitted that the father of the Advocate who was representing the appellant before the court below was seriously sick, and later on he died. Therefore, he could

not be present before the court. Nevertheless, he made arrangements to get the case adjourned. In such circumstances, there was absence of the counsel.

3. I have gone through the order of the court below. It reveal that the learned Magistrate has given repeated opportunities to the appellant to produce the stamped cover for issuing summons to the bank authorities. It was not done. That was the reason that the complaint was dismissed. There is no justification for not producing the stamped cover, which ought to have been done, even in the absence of the counsel, by the complainant. Therefore, I do not find that the learned Magistrate was hasty in dismissing the complaint.

4. However, I am of the view that an opportunity be given to the parties to complete the proceedings, as the complainant was examined as PW.1, and only the summoning the extract of the ledger of the Bank, has to be done by the complainant.

5. In such circumstances, I set aside the impugned order, dated 26.12.2005, and restore C.C.No.330/2003, on the file of the Judicial First Class Magistrate Court, Kuthuparamba.

6. The parties shall appear before the court below on 20.4.2007.

7. The learned Magistrate shall dispose of the matter within four months from the date of appearance of the parties before that court.

Criminal Appeal is disposed of as above.

J.M. JAMES,
JUDGE

nj.